No. 21-2641

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Corey Skelton, individually and as Trustee for the next of kin of Decedent Beth Michelle Skelton,

Plaintiff – Appellee,

v.

Reliance Standard Life Insurance Company, a Member of the Tokio Marine Group,

Defendant – Appellant.

On Appeal from the United States District Court
for the District of Minnesota

BRIEF OF THE SECRETARY OF LABOR AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF-APPELLEE

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STATEMENT OF THE ISSUES

When Beth Skelton was hired by Davidson Hotels, she enrolled in her employer's basic life insurance policy, which was issued by Reliance Standard Life Insurance Company ("Reliance"). Beth later sought supplemental life insurance coverage and paid premiums for that coverage when instructed to do so by Davidson.

Beth designated her husband, Corey Skelton ("Plaintiff"), as the beneficiary of both the basic and supplemental life insurance policies. When Beth died by suicide, Reliance did not pay benefits under the separate supplemental policy, asserting that it had never received or approved evidence of insurability ("EOI") from Beth—i.e., evidence that she was in good health—which was a prerequisite for supplemental coverage.

Plaintiff brought suit alleging, among other things, that Reliance breached its fiduciary duties under ERISA when it failed to take the necessary action to guard against the risk that Beth would be charged premiums before she was properly enrolled for supplemental coverage.

The district court granted summary judgment for Plaintiff. It held that Reliance had a fiduciary duty to prudently ensure that it did not

collect premiums before enrolling participants for coverage, and concluded that Reliance breached that fiduciary duty here. The Secretary's brief addresses the following question presented:

> Whether a fiduciary with discretionary authority to determine eligibility for coverage and collect premiums for that coverage has a duty to protect against the risk that premiums are collected before eligibility is determined?

The following cases and statutory provision are most apposite to this question.

- *Silva v. Metropolitan Life Insurance Company*, 762 F.3d 711 (8th Cir. 2014);
- *Frye v. Metropolitan Life Insurance Company*, No. 3:17-cv-31, 2018 WL 1569485 (E.D. Ark. Mar. 30, 2018);
- *Lanpher v. Metropolitan Life Insurance Company*, 50 F. Supp. 3d 1122 (D. Minn. 2014); and
- ERISA section 404, 29 U.S.C. § 1104.

STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY TO FILE

The Secretary of Labor ("Secretary") has the primary regulatory and enforcement authority for Title I of ERISA and is responsible for "assur[ing] the . . . uniformity of enforcement of the law under the ERISA statutes." *Sec'y of Lab. v. Fitzsimmons*, 805 F.2d 682, 691–93 (7th Cir. 1986) (en banc); 29 U.S.C. §§ 1132, 1135.

This case presents a variation of a recurring fact pattern in which participants in ERISA-governed group life insurance plans are assessed premiums for that coverage, only for their beneficiaries to be told later that the participant did not qualify for coverage due to a lack of satisfactory EOI. *See*, *e.g.*, Findings of Fact and Conclusions of Law at 14, 21, *Cho v. Reliance Standard Life Ins. Co.* (C.D. Cal. Mar. 5, 2020) ECF No. 70 (2:18-cv-4132) (finding that Reliance collected premium payments for over a year without verifying submission of required EOI, and in so doing, "waived its right to require evidence of insurability and proof of good health") *aff'd* 852 Fed. App'x 304 (9th Cir. 2021); *Patterson v. Reliance Standard Life Ins. Co.*, 986 F. Supp. 2d 1140, 1149–50 (C.D. Cal. 2013) (finding that despite collecting premiums for more than three years, Reliance "only investigated the eligibility of [decedent] for

supplemental life insurance coverage after her death"); *Am. Soc'y for Technion-Israel Inst. of Tech., Inc. v. First Reliance Standard Life Ins. Co.*, 07-cv-3913, 2009 WL 2883598, at *2 (S.D.N.Y. Sept. 8, 2009) (noting that Reliance accepted supplemental life insurance premiums for seven years without verifying submission of evidence of insurability). This Court has observed that insurers have a fiduciary duty to establish systems to reduce the risk that participants will pay premiums for coverage—leading them to believe they are covered—only for the insurer to later deny benefits to participants' beneficiaries. *E.g., Silva v. Metro. Life Ins. Co.*, 762 F.3d 711, 724 (8th Cir. 2014). The Secretary has an interest in recognizing and enforcing insurers' fiduciary obligation to maintain a prudent system for determining eligibility and collecting premiums that addresses that well-known risk.

The Secretary files this brief as amicus curiae pursuant to Federal Rule of Appellate Procedure 29(a)(2).

STATEMENT OF THE CASE

A. Factual Background

Beth Skelton was a management-level employee of Davidson Hotels LLC, Davidson Hotel Company ("Davidson"). *Skelton v. Reliance Standard Life Ins. Co.*, No. 18-cv-3344, 2020 WL 6875503, at *1 (D. Minn. Nov. 23, 2020). Davidson was the plan administrator of its ERISA-covered welfare benefits plan (the "Plan"), which provided dental, health, life and long-term disability benefits for its employees. *Id.* While Davidson generally "had the discretionary authority to interpret the Plan, determine eligibility for coverage and eligibility for claims[,]" Reliance alone had the ability to determine whether employees were eligible for supplemental life insurance coverage. *Id.*; *see also* R. Doc. 168-1 (Policy) at 11 & 16.

When Beth was hired in April 2013, she was automatically enrolled in a $100,000 basic life insurance policy, one of several benefits offered through Davidson's Plan. *Skelton*, 2020 WL 6875503, at *1; R. Doc. 178-2 (April 2013 Benefit Confirmation). Davidson covered the cost of basic life insurance. *See Skelton*, 2020 WL 6875503, at *1; R. Doc. 178-1 (Benefits Enrollment Guide). Under the Plan, employees could

pay for supplemental term life insurance, which Beth initially declined. *Skelton*, 2020 WL 6875503, at *1. In November 2013, Plaintiff regained custody of his minor son. At that time, Beth enrolled in the maximum supplemental life insurance offered under the Plan: $238,000 for her and $50,000 for Plaintiff, purportedly to ensure that Plaintiff's son was protected in the event anything happened to Beth or to Plaintiff. *Id.*

The life insurance policy ("Policy") governed employee eligibility for supplemental life insurance. *Skelton*, 2020 WL 6875503, at *1. Employees who sought supplemental life insurance 31 days or more after commencing employment were required to submit EOI, in which an applicant presents "proof of good health," and "the insurer must approve the request before the insurance becomes effective." *Id.* However, the EOI requirement is not absolute, as the Policy also states that an employee need not submit EOI when seeking to change insurance due to a "life event," so long as "the insured applies within 31 days of such . . . event." *Id.* at *2 (citation omitted). Beth asked Davidson's Director of Human Resources if "changing custody of her

stepson constituted a 'Qualified Status Change,'" and was told that it did. *Id.*[1]

A Benefit Confirmation form from January 2014 confirms that Beth applied for supplemental life insurance because she had "[r]egain[ed] custody of [a] dependent child." *Skelton*, 2020 WL 6875503, at *2; R. Doc. 178-5 (January 2014 Benefit Confirmation). A Benefit Verification form from the same month confirmed that Beth was enrolled in supplemental insurance coverage, effective January 1, 2014. *Skelton*, 2020 WL 6875503, at *1; R. Doc. 178-6 (Benefit Verification).

"At some point" after enrolling for supplemental life insurance coverage, either Reliance or Davidson sent Beth a document titled "Important Team Member Instructions." *Skelton*, 2020 WL 6875503 at*2; R. Doc. 168-1 at 55. This form, which appears to have been sent jointly by Reliance and Davidson, informed Beth that she needed to complete EOI in connection with her supplemental life insurance application and submit the form *directly to Reliance* by January 21,

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[1] The Director of Human Resources stated in a supplemental affidavit, executed after Beth's death, that because Beth did not adopt Plaintiff's son, having the son move into Beth's home was not a "Qualifying Status Change." *Skelton*, 2020 WL 6875503, at *2.

2014. *Skelton*, 2020 WL 6875503 at*2; R. Doc. 168-1 at 55 (emphasis added). The form stated that "Reliance Standard Life Insurance Company will return" the form "to you for completion" if the EOI is incomplete, and that supplemental coverage will not take effect until the EOI is approved by Reliance's Medical Underwriting Department. *Skelton*, 2020 WL 6875503 at*2 (citation omitted). The form concludes that "*[y]ou will not be charged premiums for amounts subject to evidence of insurability until the approval is granted*." *Id.* (citation omitted) (emphasis added).

"Plaintiff is certain that [Beth] completed the [EOI] form" and he is confident that she "would have mailed it or dropped it off at work." *Skelton*, 2020 WL 6875503, at *2. It is undisputed that neither Beth nor Plaintiff received confirmation from Reliance or Davidson that EOI was received. *Id.* It is also undisputed that neither Beth nor Plaintiff received any notification or indication that the form was *not* received. *Id.* Reliance states that it never received Beth's EOI. *Id.* at *3.

On February 24, 2014, Beth went on medical leave, and began receiving short and long-term disability benefits. *Skelton*, 2020 WL 6875503, at *3. On March 4, 2014, Davidson sent Beth a letter notifying

her that she was required to pay premiums to maintain her benefits while on disability leave; the outstanding premium amount listed in the letter included the premium for supplemental life insurance coverage. *Id.* Beth paid the premiums for the period from February 2014 through May 24, 2014. *Id.* It is unclear whether Beth's payments for supplemental life insurance "were forwarded to Reliance," because Reliance's billing system did not collect sufficient information for it to assess "whether Davidson forwarded to Reliance any premiums mistakenly billed." *Id.* at *6. On July 29, 2014, Davidson sent Beth another letter informing her that she was past due for premiums—including supplemental life insurance premiums—covering the period from May 24, 2014 through July 20, 2014. *Id.* at *3.

On March 15, 2015, Reliance sent Beth a letter to inform her that she may be eligible for a "Waiver of Premium benefits." *Skelton*, 2020 WL 6875503 at *3. She applied for and was granted the premium waiver, retroactive to March 1, 2014. *Id.*

Beth committed suicide on December 6, 2015. *Skelton*, 2020 WL 6875503, at *3. Reliance sent Plaintiff a "Proof of Loss Claim Statement" stating that Beth was insured for $100,000; Plaintiff

completed and returned the claim form. *Id.* After receiving the $100,000 benefit, Plaintiff contacted both Reliance and Davidson about Beth's supplemental life insurance policy. *Id.* Reliance stated that "it had no record of supplemental life [insurance coverage] and no record of receiving an EOI from Beth." *Id.*

On March 28, 2016, Davidson sent Plaintiff a letter acknowledging that Beth had applied for supplemental life insurance coverage, but that the election was "pending" because Reliance did not receive her EOI. *Skelton*, 2020 WL 6875503, at *3. The letter acknowledged that Davidson previously sent letters showing premiums owed that "incorrectly included premiums for the supplemental term life insurance." *Id.* The letter explained that the "premium should not have been requested until coverage was actually approved by Reliance Standard's Medical Underwriting Department." *Id.* (citations omitted). Davidson refunded Plaintiff $133.12, the maximum amount Beth could have paid for supplemental life insurance premiums. *Id.*

B. Decision Below

Plaintiff filed suit against Reliance, asserting a claim for breach of fiduciary duty pursuant to ERISA section 502(a)(3), 29 U.S.C.

§ 1132(a)(3). *See* R. Doc. 144 at ¶¶ 62–63. Plaintiff and Reliance filed competing motions for summary judgment. *See* R. Docs. 163, 175. Plaintiff argued "that Reliance had a fiduciary duty to ensure that its system of administration was such that Reliance would not collect premiums until coverage was actually in force." *Skelton*, 2020 WL 6875503 at *6. Reliance did not dispute that a fiduciary breach occurred, but instead argued that Davidson was responsible for the breach, because Davidson "was the fiduciary of the Plan regarding enrollment and collecting premiums." *Id.*

The district court found it significant that while Reliance bore sole responsibility for evaluating participant eligibility, it "had no way of knowing whether Davidson forwarded to Reliance any premiums mistakenly billed." *Skelton*, 2020 WL 6875503 at *6. The district court ultimately ruled in Plaintiff's favor, finding that Reliance's "system was flawed" and concluding that Reliance had a fiduciary "duty to ensure its system of administration did not allow it to collect premiums until coverage was actually in force." *Id*. Davidson is not a party on appeal.

ARGUMENT

Reliance Had a Fiduciary Duty to Prudently Guard Against the Risk of Collecting Premiums from Beth Before Determining Her Eligibility.

A. Reliance Was the Fiduciary Responsible for Determining Coverage and Collecting Premiums.

An entity is an ERISA fiduciary "with respect to a plan to the extent . . . he has any discretionary authority or discretionary responsibility in the administration of such plan." 29 U.S.C. § 1002(21)(A)(iii); *see Aetna Health Inc. v. Davila*, 542 U.S. 200, 220 (2004) (entities with responsibility for "mak[ing] discretionary decisions regarding eligibility for plan benefits . . . must be treated as plan fiduciaries"); *Maniace v. Com. Bank of Kansas City, N.A.*, 40 F.3d 264, 267 (8th Cir. 1994) ("discretion is the benchmark for fiduciary status under ERISA"). At all relevant times, pursuant to the terms of the policy, Reliance was a fiduciary with sole discretionary authority to determine a participant's eligibility for supplemental life insurance coverage. Davidson was not permitted to make eligibility determinations with respect to supplemental life insurance coverage. *See, e.g.*, R. Doc. 168-1 (Policy) at 11 ("Employees and spouse electing coverage after 31 days of the date of the acquisition are subject to *our*

[Reliance's] approval of proof of good health and such amounts of insurance will not be effective until approved by *us* [Reliance]") (emphasis added) & 16 (coverage requiring EOI will become effective on "the first of the month following the date *we* [Reliance] approve any required proof of good health") (emphasis added).

Further, it is undisputed that the form Beth received regarding submission of EOI stated that EOI should be submitted directly to Reliance and that coverage would not take effect until the EOI was approved by Reliance's Medical Underwriting Department. *See Skelton*, 2020 WL 6875503, at *2 (citing R. Doc. 178-13). Neither Davidson nor any entity other than Reliance had the authority to determine whether an employee was eligible for supplemental coverage. This rendered Reliance the sole fiduciary responsible for assessing Beth's eligibility for supplemental life insurance coverage. *See* 29 U.S.C. § 1002(21)(A)(iii); *Lanpher v. Metro. Life Ins. Co.*, 50 F. Supp. 3d 1122, 1149–50 (D. Minn. 2014) (finding that an insurer with sole responsibility for making eligibility determinations is a fiduciary); *see also Fink v. Union Cent. Life Ins. Co.*, 94 F.3d 489, 492 (8th Cir. 1996) (entity responsible for "determining employee eligibility" for coverage is a fiduciary).

In addition, this Court's precedent establishes that Reliance has fiduciary responsibilities that attach to its collection of premiums from plan participants; Reliance must prudently ensure against "wrongful" collection of premiums from employees who are ineligible for coverage. In *Silva*, the decedent had applied for supplemental life insurance coverage with MetLife, and his employer deducted premiums from his paycheck until the time of his death. 762 F.3d at 713–14. MetLife denied the plaintiff's claim for supplemental life insurance benefits, stating that it never received decedent's required EOI. *Id.* at 714. The plaintiff filed suit, alleging "that MetLife breached its fiduciary duties to [decedent] by collecting insurance policy premiums from him for six months and then, after [his] death, denying that he had a valid policy." *Id.* at 722. This Court agreed that the plaintiff stated a viable claim for breach of fiduciary duty against MetLife. *Id.* at 722–23. It stated that "MetLife's premium deductions, coupled with" its failure to notify insured that he was not actually covered by the supplemental life insurance policy, "reasonably induced [decedent] to believe that his application for a supplemental life insurance policy was approved by MetLife and that no further action was needed, either to ensure

coverage with MetLife or to acquire other insurance privately." *Id.* This Court added that "[e]ven if [decedent] read the entire Plan, he reasonably could have believed that MetLife had sufficient evidence of insurability from him or that the provision did not apply to him since MetLife began deducting premiums from his paycheck and the supplemental life insurance policy showed up on his . . . online benefits enrollment page." *Id.* at 724.

And an insurer like Reliance has that fiduciary responsibility, even if it relies on employers to deduct and remit premiums from employees' paychecks. *See Silva*, 762 F.3d at 714 (noting that the employer, rather than the insurer, actually withheld the premiums from decedent's paycheck); *see also Salyers v. Metro. Life Ins. Co.*, 871 F.3d 934, 940 (9th Cir. 2017) (explaining that the "federal common law of agency" under ERISA applies to insurer-employer relationships to create "incentives for diligent oversight and [to] prevent[ ] an insurer" acting as a principal, "from relying on a compartmentalized system to escape responsibility" for an employer/agent's errors (citations omitted)). The entire process for withholding employee contributions from paychecks and using those contributions to pay premiums is

subject to fiduciary duties and responsibilities. *See, e.g.*, *In re Harris*, 898 F.3d 834, 844 (8th Cir. 2018); *Lanpher*, 50 F. Supp. 3d at 1150 (finding that the full process for assessing insurability and communicating that determination to both the employee and the employer "falls within the scope of discretionary, fiduciary responsibilities under ERISA"). An insurer cannot retain sole authority to make discretionary eligibility determinations while insulating itself from liability from an employer's errors with respect to the collection of premiums.

In exercising these responsibilities, fiduciaries like Reliance have a duty of loyalty and prudence to individual participants. *E.g.*, *Shea v. Esensten*, 107 F.3d 625, 628 (8th Cir. 1997) ("ERISA fiduciaries must comply with the common law duty of loyalty, which includes the obligation to deal fairly and honestly with all plan members."); *Silva,* 762 F.3d at 716 n.8, 724; *see also* 29 U.S.C. § 1132(a)(3). And fiduciaries must protect against risks of harm to the plan and its participants. *E.g.*, *Chao v. Merino*, 452 F.3d 174, 182 (2d Cir. 2006) (Where a "fiduciary was aware of a risk to the fund, he may be held liable for failing to investigate fully the means of protecting the fund from that risk."); *Sec'y*

of Lab. v. Doyle, 675 F.3d 187, 202 (3d Cir. 2012) ("[W]hen confronted with suspicious circumstances, a trustee may be required to investigate potential risks to a plan."). As the final arbiter of eligibility and as the final recipient of insurance premiums, Reliance must act "with the care, skill, prudence, and diligence" that a prudent entity would exercise in "conduct[ing]" this "enterprise." 29 U.S.C. § 1104(a)(1)(B). Thus, Reliance must prudently and loyally protect the plan and its participants from the risk that it will wrongfully collect employee contributions without first determining a participant's eligibility for coverage. The district court correctly recognized that "[a]s a fiduciary . . . Reliance had a duty to ensure its system of administration did not allow it to collect premiums until coverage was actually in force." *Skelton*, 2020 WL 6875503, at *6.

B. The District Court Correctly Recognized That Reliance Had a Duty to Prudently Operate Its System of Administration.

The district court correctly determined that a fiduciary like Reliance must take steps to guard against the risk that insurance premiums will be collected from participants before coverage is approved or in force. *Skelton*, 2020 WL 6875503, at *6. In support, the

district court cited *Frye v. Metropolitan Life Insurance Company*, which found that a breach of fiduciary duty occurred when the employer and insurer did not exchange simple information that would have easily prevented employees from "pay[ing] for coverage for dependents who either are ineligible or become ineligible." No. 3:17-cv-31, 2018 WL 1569485, at *3 (E.D. Ark. Mar. 30, 2018). There, the court found that a "structural administrative defect" existed, because the insurer "decided not to require [the employer], as plan administrator, to [confirm eligibility at the front end]. . . . These omissions created the potential for a premium stream where no possibility of coverage existed on the back-end." *Id.* at *3–*4.

Likewise, in *Silva,* the insurer was responsible for prudently ensuring that it collected insurance premiums only from participants who were eligible for coverage, despite the employer's role in both withholding premiums from paychecks and conducting an initial screening of applicants to ensure EOIs were completed, before forwarding EOIs to the insurer. 762 F.3d at 714–15. *Silva* recognized the risk that employers might err when making eligibility calls and subsequently withholding premiums. *Id.* at 716 n.7 (noting the

employer "neglected to send the completed forms to MetLife"). In *Silva*, this Court faulted the insurer, rather than just the employer, when "it was later revealed [after the lawsuit was filed] that around 200 other . . . employees similarly had not submitted their Statement of Health forms, or if they had, they had not been provided to MetLife" but had nevertheless paid premiums for coverage. *Id.* at 715. Accordingly, a system that does not properly match the collection of premiums with eligibility, and that results in the "wrongful collection of . . . premiums," is imprudent. *Id.* at 724.

In this case, the record indicates that Reliance had fiduciary responsibilities to Beth. As in *Frye* and *Silva,* Reliance in this case represented to claimants that it was jointly responsible with Davidson, the employer, over the entire system with Reliance as the fiduciary that ultimately determines eligibility. The instructions sent to Beth regarding completion of the EOI form listed both Davidson and Reliance as its originators. R. Doc. 168-1 at 55 (document titled "Important Team Member Instructions"). These instructions, apparently issued by Davidson and Reliance, jointly stated that the claimant "will not be *charged* premiums for amounts subject to evidence of insurability until

the approval is granted." *Skelton*, 2020 WL 6875503, at *2 (quoting R. Doc. 168-1 at 55) (emphasis added). The form explicitly states that any questions regarding the EOI form should be submitted directly to Reliance, reflecting that Reliance was the "primary ERISA entity." R. Doc. 168-1 at 55; *see Moore v. Apple Cent., LLC*, 893 F.3d 573, 578 (8th Cir. 2018) ("Indeed, the [insurance] enrollment form [insurer] provided expressly instructed . . . employees to return the form 'to your employer,' reflecting [employer's] role as a primary ERISA entity.").

Certainly, the district court and the Appellee identified undisputed facts and inferences that would support Beth's reasonable understanding that (1) Reliance and Davidson knew she applied for supplemental life insurance or an insurance requiring EOI; (2) Reliance and Davidson jointly promised not to charge her premiums unless the application for insurance was approved; and (3) she was charged—and paid—premiums, so Reliance must have approved her insurance. *Compare Silva*, 762 F.3d at 724 (relying on the participant's "reasonable expectations" to judge whether the insurer's system was subject to equitable estoppel); *Salyers*, 871 F.3d at 941 (finding that when an employer collected EOI on behalf of the insurer, but insurer was

responsible for making eligibility determinations, "[a] plan participant would have reasonably believed the [employer] did not collect evidence of insurability of its own accord but on [insurer's] behalf.").

In addition, it appears that Reliance's particular arrangement with Davidson created a potential risk that premiums would be collected before insurability had been verified. When Davidson withheld employee contributions from employees' paychecks, it forwarded the contributions to Reliance *in bulk*, without detailing which premium payments were attributable to which employees. *See* Appellant Br. at 6–7 ("Davidson Hotel was also responsible for correctly collecting any required premiums and sending them to Reliance Standard."); R. Doc. 168-1 at 41 (Reliance interrogatory response, indicating that "[p]remiums were remitted through the employer"). From this record, it appears that Reliance did not have a system to match eligibility with premiums actually collected. And as a result, Reliance "had no way of knowing whether Davidson forwarded to Reliance any premiums mistakenly billed." *Skelton*, 2020 WL 6875503, at *6.

In other cases, Reliance has explained that it maintains an alternative process with other employers that better reduces the risk

that premiums will be collected improperly. In *Cho v. First Reliance Standard Life Insurance Company*, No. 20-55314 (9th Cir. 2021), First Reliance Standard[2] stated the following in its reply brief to the Ninth Circuit:

> Significantly, [the employer] was offered the option of 'list billing'. Under list billing, First Reliance would have been responsible for preparing itemized bills and requesting Evidence of Insurability. . . . But [the employer] chose 'self-administration', under which [the employer] was responsible for processing enrollment, including Evidence of Insurability when required. . . . Under the latter option elected by [the employer], First Reliance also would have no information regarding individual premiums or whether Evidence of Insurability was needed until it was submitted.

Reply Br. for Appellant, 2021 WL 1377880, at *5–*6. Reliance's decision to accept premium payments from Davidson in bulk, rather than requiring itemized billing, may bear on Plaintiff's claim that Reliance's system was imprudent, because it was unduly risky.

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[2] First Reliance Standard is another name for Reliance Standard. *See* Reliance Standard, https://www.reliancestandard.com/home/ (last visited Nov. 29, 2021).

C. Reliance's Arguments That It Was Not a Fiduciary Are Incorrect.

Reliance argues on appeal that it had no fiduciary duty to the plan or its participants, because the relevant duties were Davidson's. Appellant Br. at 15. Reliance makes much of the self-described differences between "enrollment" versus "eligibility" and "billing and collecting premiums" versus "receiving" and applying those premiums to coverage. *Id.* at i, 6, 11, 14. But because Reliance ultimately determines whether participants are eligible for the coverage in which they are enrolled and for which they are paying premiums, Reliance cannot absolve itself of all responsibility with respect to how claimants are enrolled in or charged for coverage. *See, e.g.*, *Silva,* 762 F.3d at 722–23 (holding the insurer responsible even though the employer had a role in enrolling employees and withholding premiums). Mistakes in enrollment and billing affect Reliance's ability to prudently determine eligibility and to use premiums it collects from participants. For example, an employer that incorrectly advises participants of enrollment requirements, or that bills incorrectly, will lead Reliance to make erroneous eligibility determinations or to incorrectly collect contributions for which it does not provide coverage.

Moreover, Reliance undertook the "obligation to communicate directly with . . . participants and beneficiaries regarding premiums, policy lapses, and reinstatement." Appellant Br. at 17 (quoting *Kerns v. Benefit Tr. Life Ins. Co.*, 992 F.2d 214, 217 (8th Cir. 1993)). The EOI instructions and form identified Reliance as the "primary ERISA entity" for charging premiums and approving applications. Whether as a consequence of Reliance's discretionary authorities or its own representations to participants, the district court correctly rejected the notion that Reliance was completely insulated from fiduciary duties just because Davidson had some intertwined duties with respect to enrollment and premium withholding. *See Skelton*, 2020 WL 6875503 at *6; *see also Salyers*, 871 F.3d at 940 (where an employer and insurer's duties are intertwined, an employer's actions in connection with "administrative responsibilities" may reasonably be attributed back to the insurer under "agency principles"); *Cho,* 852 Fed. App'x at 305.

D. Insurers Acting in a Fiduciary Capacity Have a Duty to Design a Prudent System.

The Secretary's primary interest in this case is to ensure that courts recognize that insurers like Reliance, as plan fiduciaries, have an ERISA-imposed duty to create a prudent system with respect to EOI

that addresses and mitigates the risks of wrongfully collecting premiums before ascertaining eligibility. The Secretary agrees with the district court's finding that, when an insurer like Reliance retains discretionary authority to determine eligibility for coverage, that insurer is not completely insulated from liability for wrongfully collecting coverage premiums by the mere fact that the employer also had a role in the enrollment and billing process.

Here, in light of Reliance's ultimate control over eligibility and the application of premiums to coverage, Reliance is incorrect that "[t]he 'system of administration' was the fiduciary responsibility of Davidson Hotel alone." Appellant Br. at 22. That assertion conflicts with *Ince v. Aetna Health Mgmt., Inc.*, 173 F.3d 672 (8th Cir. 1999), where this Court found that, "[g]iven the evidence of [the insurer's] substantial control over the administration of the . . . Plans . . . the bare contractual recitals that [the insurer] acts only under the control of [the employer] may not be sufficient to refute, as a matter of law, a specific allegation that [insurer] exercised discretionary authority with respect to an aspect of the Plan." *Id.* at 675; *see also Shelton v. ContiGroup Cos., Inc.*, 285 F.3d 640, 643–44 (8th Cir. 2002) (finding that plan administrative

committee "abdicated its duty" and "abused its discretion," where it allowed the employer to make an eligibility decision that was reserved for the plan's administrative committee).

Reliance's broad argument that it had no fiduciary duties related to the collection of insurance premiums, if accepted by this Court, would diminish insurers' ERISA-imposed duty to design a prudent system that addresses well-known risks in circumstances where the insurer allows employers to handle the initial processing of applications and to withhold premiums from employees. The result of such a diminished duty on insurers would likely be more beneficiaries who are denied coverage after having been led to believe they were covered by their payment of premiums. Given the long history of well-documented problems in this area, *see supra* pp. 3–4, it is important for this Court to reiterate its holding in *Silva* that insurers, in addition to employers, have an obligation to implement prudent systems to guard against those risks.

The Secretary accordingly urges this Court to reject Reliance's attempt to avoid diligent oversight by relying on a compartmentalized system to escape all responsibility. The Secretary takes no position on

Reliance's case-specific argument that it acted prudently in collecting premiums from Davidson's employees, with respect to the specific error in this particular case and on this record. Nor does he opine on Reliance's argument that this record does not support a finding that Davidson transmitted Beth's improperly collected premiums to Reliance. The Secretary therefore takes no position on whether the district court's grant of summary judgment to Plaintiff was warranted on these facts.

CONCLUSION

For the foregoing reasons, the Secretary urges this Court to reject Reliance's arguments that it is completely insulated from liability as a result of Davidson's errors. The Secretary urges the Court, consistent with *Silva*, to reaffirm the insurers' fiduciary duty to prudently establish an administrative system that mitigates risks of improper collection of premiums before eligibility is determined. The Secretary takes no position as to whether this record can support summary judgment for a breach of fiduciary that caused losses to Plaintiff.

Respectfully submitted,

Date: December 6, 2021

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Date: December 6, 2021

/s/ Sarah D. Holz
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Date: December 6, 2021

/s/ Sarah D. Holz
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CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2021, I caused one copy of the foregoing brief to be sent to the Court and to the following counsel, via UPS overnight service:

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